

**Introduced by Senator Simitian**

February 22, 2005

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An act to amend Section ~~8842 of the Fish and Game~~ 15400 of, and to add Section 54.5 to, the Fish and Game Code, and to amend Section 30411 of the Public Resources Code, relating to ~~fishing~~ aquaculture.

LEGISLATIVE COUNSEL'S DIGEST

SB 768, as amended, Simitian. ~~Fishing; trawl nets~~ Marine finfish aquaculture.

*Existing law authorizes the Fish and Game Commission to lease state water bottoms to any person for aquaculture, and authorizes the commission to adopt regulations governing the terms of the leases. Existing law prohibits state water bottoms from being leased, unless the commission determines that the lease is in the public interest.*

*This bill would prohibit a person from engaging in marine finfish aquaculture, as defined, without a lease from the commission. The bill would require leases and regulations adopted by the commission for marine finfish aquaculture to meet certain standards.*

*(2) The California Coastal Act requires the Department of Fish and Game, in consultation with the Aquaculture Development Committee, to prepare programmatic environmental impact reports for existing and potential commercial aquaculture operations in both coastal and inland areas of the state if certain conditions are met.*

*This bill would require a final programmatic environmental impact report prepared pursuant to that requirement for coastal marine finfish aquaculture projects approved by the commission to ensure that marine finfish aquaculture is managed in a sustainable manner that adequately considers specified factors.*

~~Existing law generally permits the use of trawl nets, as defined, for the taking of fish and other marine life, except as otherwise prohibited for specific species or in various areas of the state. Existing law specifically authorizes the taking of shrimps and prawns by use of a trawl net under a permit issued by the Department of Fish and Game and grants the Fish and Game Commission authority over all state-managed bottom trawl fisheries not managed under a federal or state fishery management plan. Existing law requires the commission, commencing January 1, 2008, to permit the taking of pink shrimp not less than two nautical miles from shore in specified waters if the commission makes specified findings relating to the use of trawl gear.~~

~~This bill would modify that provision to require the commission, commencing July 1, 2008, to permit the taking of pink shrimp not less than two nautical miles from shore in specified waters if the commission makes specified findings relating to the use of trawl gear, as provided.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 8842 of the Fish and Game Code is~~  
2     ~~amended to read:~~

3     ~~SECTION. 1. The Legislature finds and declares all of the~~  
4     ~~following:~~

5     ~~(a) The United States Commission on Ocean Policy recently~~  
6     ~~determined that the farming of marine species is a rapidly~~  
7     ~~growing domestic and international industry that could become~~  
8     ~~an important source of seafood for the United States.~~

9     ~~(b) The United States Commission on Ocean Policy also~~  
10    ~~determined that the growth of marine aquaculture presents~~  
11    ~~potential threats to the marine environment because of an~~  
12    ~~inadequate regulatory regime, and that the management of~~  
13    ~~marine aquaculture activities should minimize potential adverse~~  
14    ~~environmental impacts including: the spread of disease and~~  
15    ~~parasites; contamination of and competition with wild fish~~  
16    ~~stocks; degradation of water quality, wetlands and other natural~~  
17    ~~habitats; contamination from fish wastes, dead fish, uneaten food~~  
18    ~~and antibiotics; harmful interactions with birds, marine~~  
19    ~~mammals and wildlife; conflicts with commercial and~~

recreational activities; introduction of nonnative species; and ecosystem effects from the use of fish meal.

(c) Marine aquaculture can also have adverse economic impacts on commercial fisheries of wild fish stocks.

(d) The United Nations Food and Agriculture Organization estimates that by 2030 more than half of the fish consumed globally will be produced through aquaculture, and has issued a Code of Conduct for Responsible Fisheries that calls for measures to monitor and minimize adverse impacts from marine aquaculture.

(e) In 2003, California banned the cultivation of salmon, transgenic fish species, and exotic finfish species in the waters of the Pacific Ocean regulated by the state, but comprehensive standards do not exist to address the full range of potential adverse impacts of marine finfish aquaculture in state waters.

(f) Marine finfish aquaculture is a young and growing industry, and many of its environmental impacts should be addressed now before serious ecological damage occurs.

(g) Therefore, it is the intent of the state to act now to manage marine finfish aquaculture in a precautionary and sustainable manner.

SEC. 2. Section 54.5 is added to the Fish and Game Code, to read:

54.5. "Marine finfish aquaculture" means the spawning, incubation, or cultivation of finfish animals in the marine waters of the state.

SEC. 3. Section 15400 of the Fish and Game Code is amended to read:

15400. (a) The commission may lease state water bottoms to any person for aquaculture, including, but not limited to, marine finfish aquaculture. The commission ~~may~~ shall adopt regulations governing the terms of the leases. No state water bottoms shall be leased, unless the commission determines that the lease is in the public interest in a public hearing conducted in a fair and transparent manner, with notice and comment, in accordance with commission procedures.

(b) A person shall not engage in marine finfish aquaculture without a lease from the commission. Leases and regulations

1 *adopted by the commission for marine finfish aquaculture shall*  
2 *meet, but are not limited to, all of the following standards:*

3 *(1) The lease site is considered appropriate for marine finfish*  
4 *aquaculture in the programmatic environmental impact report*  
5 *prepared pursuant to subdivisions (e) and (f) of Section 30411 of*  
6 *the Public Resources Code.*

7 *(2) A lease will not interfere with fishing or other uses, disrupt*  
8 *significant wildlife and marine habitats, or harm the ability of the*  
9 *marine environment to support ecologically significant flora and*  
10 *fauna.*

11 *(3) The discharge of pollutants must be prevented to the*  
12 *maximum extent possible and, where it cannot be prevented,*  
13 *impacts must be mitigated to the maximum extent possible.*

14 *(4) The use of fish meal shall be minimized to the maximum*  
15 *extent possible.*

16 *(5) Leases may be for a period of 10 years, renewable every*  
17 *five years at the discretion of the commission. Fees shall, at a*  
18 *minimum, be sufficient to pay for the costs of administering the*  
19 *marine finfish aquaculture program, and monitoring and*  
20 *enforcing the terms of the lease.*

21 *(6) Fish stocks and facilities shall be monitored regularly and*  
22 *at least annually, and fish stocks shall be removed and facilities*  
23 *closed if the commission determines that the facilities or*  
24 *operations may damage the marine environment.*

25 *(7) Lessees shall be responsible for restoring damage to*  
26 *human health and the marine environment to prepermit*  
27 *conditions through bonding or other mechanisms deemed*  
28 *appropriate by the commission.*

29 *(8) Finfish numbers and density shall be limited to what can*  
30 *be safely raised while protecting the marine environment.*

31 *(9) Adverse interactions with marine mammals and other*  
32 *marine wildlife shall be prevented to the maximum extent*  
33 *possible.*

34 *(10) The use of all drugs, chemicals, and antibiotics, and*  
35 *amounts used and applied, must be minimized to the maximum*  
36 *extent possible. All pharmaceuticals, chemicals, and antibiotics,*  
37 *and the amounts used and applied, shall be approved by the*  
38 *United States Food and Drug Administration for marine finfish*  
39 *aquaculture, and reported to and reviewed by the commission on*  
40 *a regular basis and at least annually.*

1     (11) All farmed fish shall be marked, tagged, or otherwise  
2     identified in a manner determined appropriate by the commission  
3     as belonging to the lessee in the event of escape, and all escaped  
4     fish shall be immediately reported to the commission.

5     (12) All facilities and operations shall be designed to prevent  
6     escape of farmed fish into the marine environment to the  
7     maximum extent possible.

8     (13) Monitoring and testing of water quality shall be required  
9     on a regular basis as deemed appropriate by the State Water  
10    Resources Control Board. All inspection and monitoring reports  
11    and other records, and all data on the discharge of chemical and  
12    biological pollutants, including, but not limited to, nutrients,  
13    dissolved oxygen, carbon dioxide, ammonia, and pathogens,  
14    shall be kept on file and available for public review.

15    SEC. 4. Section 30411 of the Public Resources Code is  
16    amended to read:

17    30411. (a) The Department of Fish and Game and the Fish  
18    and Game Commission are the principal state agencies  
19    responsible for the establishment and control of wildlife and  
20    fishery management programs, and the commission shall not  
21    establish or impose any controls with respect thereto that  
22    duplicate or exceed regulatory controls established by these  
23    agencies pursuant to specific statutory requirements or  
24    authorization.

25    (b) The Department of Fish and Game, in consultation with  
26    the commission and the Department of Boating and Waterways,  
27    may study degraded wetlands and identify those which can most  
28    feasibly be restored in conjunction with development of a boating  
29    facility as provided in subdivision (a) of Section 30233. Any  
30    ~~such~~ study conducted under this subdivision shall include  
31    consideration of all of the following:

32    (1) Whether the wetland is so severely degraded and its natural  
33    processes so substantially impaired that it is not capable of  
34    recovering and maintaining a high level of biological  
35    productivity without major restoration activities.

36    (2) Whether a substantial portion of the degraded wetland, but  
37    in no event less than 75 percent, can be restored and maintained  
38    as a highly productive wetland in conjunction with a boating  
39    facilities project.

1 (3) Whether restoration of the wetland's natural values,  
2 including its biological productivity and wildlife habitat features,  
3 can most feasibly be achieved and maintained in conjunction  
4 with a boating facility or whether there are other feasible ways to  
5 achieve ~~such~~ these values.

6 (c) The Legislature finds and declares that salt water or  
7 brackish water aquaculture is a coastal-dependent use which  
8 should be encouraged to augment food supplies and to further the  
9 policies set forth in Chapter 4 (commencing with Section 825) of  
10 Division 1. The Department of Fish and Game may identify  
11 coastal sites it determines to be appropriate for aquaculture  
12 facilities. If the department identifies these sites, it shall transmit  
13 information identifying the sites to the commission and the  
14 relevant local government agency. The commission, and where  
15 appropriate, local governments, shall, consistent with the coastal  
16 planning requirements of this division, provide for as many  
17 coastal sites identified by the Department of Fish and Game for  
18 any uses that are consistent with the policies of Chapter 3  
19 (commencing with Section 30200) of this division.

20 (d) Any agency of the state owning or managing land in the  
21 coastal zone for public purposes shall be an active participant in  
22 the selection of suitable sites for aquaculture facilities, and shall  
23 make the land available for use in aquaculture when feasible and  
24 consistent with other policies of this division and other  
25 provisions of law.

26 (e) The Department of Fish and Game shall, in consultation  
27 with the Aquaculture Development Committee, prepare  
28 programmatic environmental impact reports for existing and  
29 potential commercial aquaculture operations in both coastal and  
30 inland areas of the state if both of the following conditions are  
31 met:

32 (1) Funds are appropriated to the department for this purpose.

33 (2) Matching funds are provided by the aquaculture industry.

34 (f) *The final programmatic environmental impact report*  
35 *pursuant to subdivision (e) for coastal marine finfish aquaculture*  
36 *projects approved by the Fish and Game Commission under the*  
37 *California Environmental Quality Act (Division 13 (commencing*  
38 *with Section 21000) shall ensure that marine finfish aquaculture*  
39 *is managed in a sustainable manner that, at a minimum,*  
40 *adequately considers all of the following factors:*

1     (1) *Appropriate areas for siting marine finfish aquaculture*  
2     *operations that minimize impacts on other user groups and the*  
3     *marine environment.*

4     (2) *The effects on sensitive ocean and coastal habitats.*

5     (3) *Assuring that the locations of marine finfish aquaculture*  
6     *operations do not disrupt sensitive habitats and ecosystems,*  
7     *harm commercial and recreational fishing, or adversely affect*  
8     *other important ocean uses or public trust values.*

9     (4) *The effects on other plant and animal species, especially*  
10    *species protected or recovering under state and federal law.*

11    (5) *The effects of the use of chemical and biological products*  
12    *and pollutants and nutrient wastes on human health and the*  
13    *marine environment.*

14    (6) *The effects of interactions with marine mammals and birds.*

15    (7) *The cumulative effects on the marine environment.*

16    (8) *The effects of feed and fish meal on marine ecosystems.*

17    (9) *The effects of escaped fish.*

18    (10) *The design of facilities and farming practices so as to*  
19    *reduce environmental impacts.*

20    8842. (a) Trawl nets of a design prescribed by the  
21    commission may be used or possessed to take shrimps or prawns  
22    under a permit issued by the department under regulations  
23    adopted by the commission.

24    Sections 8831, 8833, 8835, and 8836 do not apply to trawl nets  
25    used or possessed under a permit issued pursuant to this section.

26    (b) Trawling for shrimps or prawns shall be authorized only in  
27    those waters of Districts 6, 7, 10, 17, 18, and 19 that lie not less  
28    than three nautical miles from the nearest point of land on the  
29    mainland shore, and all offshore islands and the boundary line of  
30    District 19A, except that in waters lying between a line extending  
31    due west from False Cape and a line extending due west from  
32    Point Reyes, trawling is allowed not less than two nautical miles  
33    from the nearest point of land on the mainland shore until  
34    January 1, 2008.

35    (c) When fishing for pink shrimp (*Pandalus jordani*) under a  
36    permit issued pursuant to this section, it is unlawful to possess in  
37    excess of 1,500 pounds of incidentally taken fish per calendar  
38    day of a fishing trip, except Pacific whiting, shortbelly rockfish,  
39    and arrowtooth flounder, which may be taken in any amount not  
40    in excess of federal regulations. No Pacific halibut and not more

1 than 150 pounds of California halibut shall be possessed or  
2 landed when fishing under a permit issued pursuant to this  
3 section. When fishing for ridgeback prawn and spotted prawn  
4 under a permit issued pursuant to this section, it is unlawful to  
5 possess in excess of 1,000 pounds of incidentally taken fish per  
6 trip.

7 (d) Commencing July 1, 2008, the commission shall permit  
8 the taking of pink shrimp not less than two nautical miles from  
9 shore in waters that lie between a line extending due west from  
10 False Cape and a line extending due west from Point Reyes from  
11 the nearest point of land on the mainland shore, if the  
12 commission finds that, upon review of information from the  
13 federal groundfish observer program and other available research  
14 and monitoring information that it determines relevant, the use of  
15 trawl gear minimizes bycatch, will not damage seafloor habitat,  
16 will not adversely affect ecosystem health, and will not impede  
17 reasonable restoration of kelp, coral, or other biogenic habitats.  
18 The commission shall pay special attention to areas where kelp  
19 and other biogenic habitats existed and where restoring those  
20 habitats is feasible, and to hard bottom areas and other substrate  
21 that may be particularly sensitive to bottom trawl impacts in  
22 making that finding.